




As addressed in the R&R, there are legal barriers to Plaintiff's claims. Since Plaintiff is challenging criminal proceedings that resulted in his conviction, his case is subject to summary dismissal because a right of action has not accrued. *Heck v. Humphrey*, 512 U.S. 477 (1994). Under *Heck*, until Plaintiff's conviction is set aside, any civil rights action based on the proceedings, conviction, and/or sentence is barred as the limitation period for any action will not run until the action accrues. Further, Defendant Assistant Solicitor McDonald is entitled to dismissal as she protected by prosecutorial immunity and has absolute immunity from suit arising in connection with her duties. See *Van de Kamp v. Goldstein*, 129 S.Ct. 855 (2009).

#### **Conclusion**

Accordingly, the Complaint is **dismissed** without prejudice and without issuance of service of process.

**AND IT IS SO ORDERED.**

  
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Richard Mark Gergel  
United States District Court Judge

January Y, 2011  
Charleston, South Carolina